

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

Plaintiff,

DECISION AND ORDER

00-CR-6049L  
05-CV-6234L

v.

CHARLES L. JACKSON,

Defendant.

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Defendant, Charles L. Jackson (“Jackson”), was convicted after a jury trial of conspiring to import cocaine. On June 30, 2003, the United States Court of Appeals for the Second Circuit affirmed Jackson’s conviction but vacated the sentence and remanded the case for resentencing in accordance with the jury’s finding that the drug quantity involved exceeded 5 kilograms. By statute, such a sentence mandated a minimum sentence of 120 months imprisonment. This Court imposed that sentence on December 10, 2003. Jackson did not appeal that sentence.

On May 9, 2005, Jackson filed a petition to vacate the judgment pursuant to 28 U.S.C. § 2255. The Government opposed the motion by memorandum filed March 20, 2006.

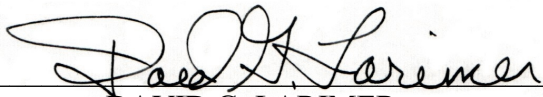
Jackson’s petition is dismissed. First of all, § 2255 must not be used as a substitute for appeal. Jackson could have raised the issues presented here on appeal. His failure to do so bars the relief requested.

On the merits, the grounds raised by Jackson are totally without merit. The jury made the determination of drug quantity and this Court did precisely what the Second Circuit directed, resentence Jackson based on the drug quantity found by the jury, which exceeded 5 kilograms. For these reasons, and for all the reasons set forth in the Government's memorandum in opposition to the petition (Dkt. #155), Jackson's petition is denied.

#### CONCLUSION

The petition to vacate brought pursuant to 28 U.S.C. § 2255 is dismissed. I decline to issue a certificate of appealability because Jackson has failed to make a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c).

IT IS SO ORDERED.

  
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DAVID G. LARIMER  
United States District Judge

Dated: Rochester, New York  
July 26, 2006.